IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Case No.: S_____

Court of Appeal Case No.: D074405

San Diego Superior Court No. 37-2018-00033348-CU-PT-CTL

_____

BRYAN PEASE,
Petitioner,

v.

LORIE ZAPF,
Respondent.

_____

After a Decision by the Court of Appeal,
Fourth Appellate District, Division One (No. D074405)

_____

PETITION FOR REVIEW

_____

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ISSUES PRESENTED

This case of first impression involves the effect of redistricting on a term limit law that prohibits city councilmembers from serving more than two consecutive terms "from any particular district." The Fourth District Court of Appeal Division One ("Fourth District") analogized this issue to what district a councilmember is "from" for purposes of a recall effort and assumed that after redistricting, this would be the new district the councilmember is assigned to represent. However, San Diego City Attorney memos on this topic say voters living in the *original* district boundaries that elected a representative are entitled to vote to recall that representative, and no California appellate court has ever settled this question. The Fourth District assumed the opposite is settled law without analyzing the question.

The logical flaw in the Fourth District's reasoning is made clear with this sentence: "Read in context, the term limit provision acts as a cap on a member's ability to serve more than two consecutive terms for the district that elected that member and on whose behalf the member serves, not the council member's geographical location or residency." (Fourth District Opinion ("Op."), attached hereto, at 14.) In the case of redistricting, this is an oxymoron. The "district that elected that member" is by definition made up of areas that are *different* from the district "on whose behalf the members serves."

Review is needed to provide election officials across the state in the many cities that are moving to district elections definitive answers to the questions and doubts the Opinion has raised:

1. After redistricting, does a sitting councilmember draw her authority to serve from the old district boundaries or the new district boundaries?

2. For purposes of term limits, recall efforts, appointment to fill a vacancy, or other matters that depend on what district a councilmember is "from," does only the assigned district number matter, or are the actual geographical boundaries of the district that elected a councilmember relevant?

3. When term limits apply to serving "from any particular district," do the geographical areas that elected a councilmember count as their current district number(s) or as the previous district number after redistricting has taken effect?

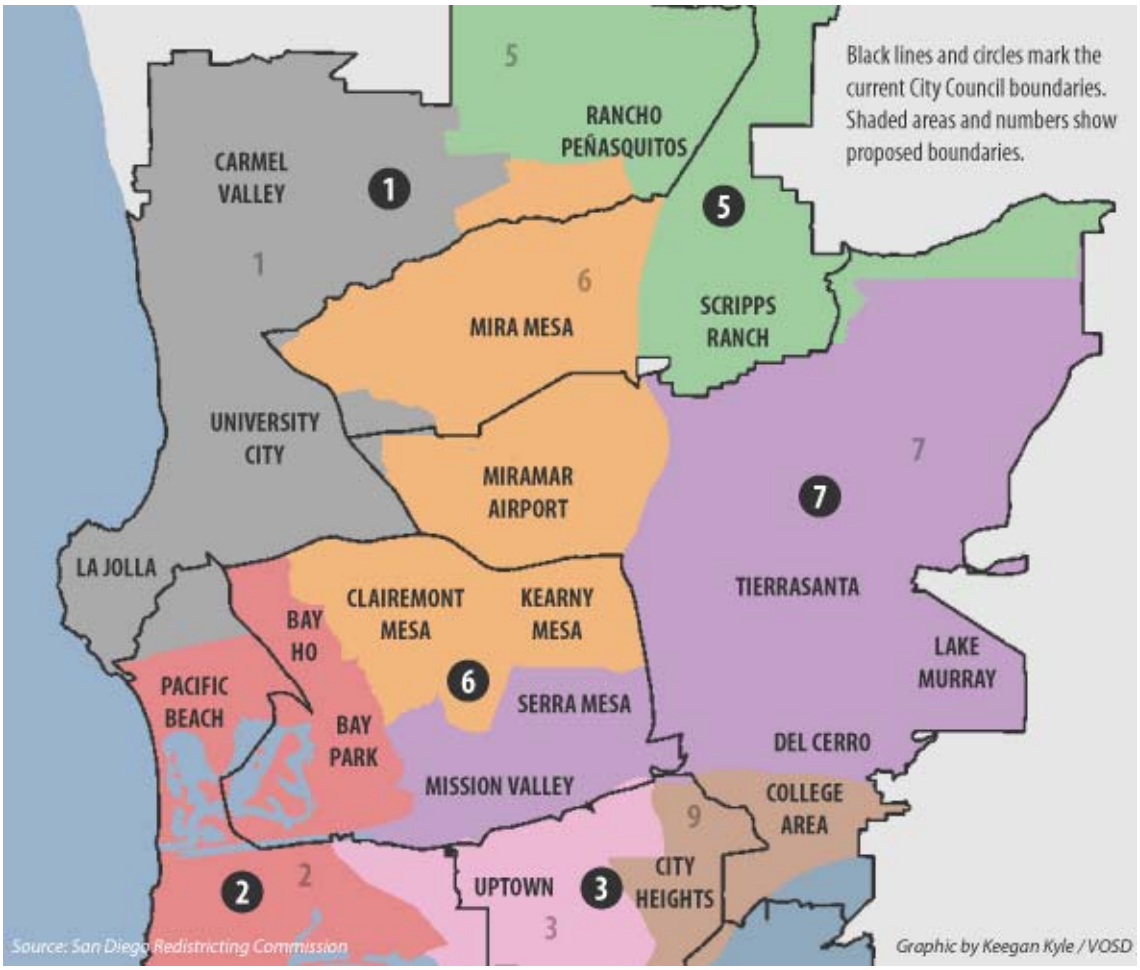
4. If a term limit statute is ambiguous, must courts automatically support the right to hold office, or should courts turn to factors such as legislative history, purpose of the statute, and public policy in defining ambiguous terms?

STATEMENT OF MATERIAL FACTS

Councilmember Lorie Zapf has at all relevant times lived in the Bay Ho neighborhood of San Diego. (APP 085:11-13, 114:18-21, 115:21.)[1] Bay Ho and adjacent Bay Park were in Council District 6 in 2010 when Zapf was first elected but quickly became part of District 2 in 2011 as a result of redistricting. (APP 783:12-16.) When this occurred, Zapf continued serving from Bay Ho but was assigned to remotely represent the new District 6, which contained many different neighborhoods on whose ballot Zapf had never appeared and never would appear. (*Ibid.*)

[1] APP refers to the Joint Appendix

This is what the districts looked like before and after the 2011 redistricting:



(APP 797.)

The black lines and circled numbers delineate the old district boundaries, while the colored areas with shaded numbers show where the new district lines are. Bay Ho and Bay Park are the northeastern portion of new District 2 and were previously the western portion of old District 6. After redistricting, parts of old District 5 (Mira Mesa) and District 7 (Miramar Airport) became the majority of the new District 6, and the majority of old District 6 became parts of new District 2 (Bay Ho and Bay Park) and District 7

(Mission Valley and Serra Mesa). The only parts of old District 6 to remain in new District 6 are Clairemont Mesa and Kearny Mesa.

Under the 2011 San Diego City Charter language, councilmembers were to continue representing the district where they resided after redistricting, which in Zapf's case would have been District 2, as she lives in Bay Ho. (APP 044.) However, if two councilmembers ended up in the same district after redistricting, they were to draw lots to determine who would represent which district. (*Ibid.*) There is no evidence Zapf drew lots with Kevin Faulconer, the other councilmember who lived in District 2 after the 2011 redistricting. (Op. at 3.) However, it is undisputed that Zapf began representing the new District 6 after redistricting and Faulconer began representing the new District 2. (Op. at 4.)

The Fourth District claimed that Appellant switched positions on whether or not Zapf actually *represented* District 2 in her first term as a result of redistricting. (Op. at 5.) However, Zapf created confusion on this point herself when she erroneously answered the initial petition by claiming she "represented the residents of the 'former' District 6 for the *entire four-year period* following her election in 2010." (APP 078:19-20, emphasis added.) Because former District 6 ceased to exist after 2011 and instead became parts of districts 2, 6 and 7, continuing to represent this geographical area would mean Zapf actually represented parts of districts 2, 6 and 7 for the majority of her first term. (Op. at 3, fn1.)

However, both parties eventually came to the realization through archive web searches and other circumstantial evidence that Zapf must have been assigned to remotely

represent the new District 6 in her first term after redistricting. (APP 783:5-13.) It is also undisputed that she did so *from* Bay Ho, which was then District 2 and separately represented by Kevin Faulconer. (Op. at 3.)

Faulconer was elected mayor in a 2014 special election. (Op. at 4.) There was then an appointment to fill the District 2 seat for the remainder of his term. However, based on an extensive City Attorney analysis of San Diego Municipal Code section 27.0708, which the City Attorney found "tracks state law, the California Elections Code, California case law and federal constitutional law," only residents of the *old* District 2 were allowed to apply, which included areas such as downtown which were not part of the new District 2, and omitted areas such as Bay Ho and Bay Park that were part of the new District 2. (http://docs.sandiego.gov/cityattorneyreports/RC-2014-7.pdf.)

Section 27.0708 provides that in the case of appointment or election to fill a vacancy following redistricting:

> (a) A candidate for appointment or election will be a resident and voter *from* within the district boundaries as they existed prior to redistricting.
>
> (b) In order to be counted as valid, nominating signatures must come *from* voters registered within the district boundaries as they existed prior to redistricting.
>
> (c) A special election held to fill a vacancy will be held within the district boundaries as they existed prior to redistricting

(http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division07.pdf, emphasis added.)

Even though Bay Ho and Bay Park were District 2 after 2011 and would continue to be represented by the appointed interim District 2 councilmember in 2014, only Zapf

was permitted to continue serving as the councilmember *from* Bay Ho, and no one from this neighborhood was permitted to apply to represent District 2, due to the appointment power relating back to the original district boundaries. The Fourth District's ruling that Zapf's first term was served "from" the new District 6 boundaries she was assigned to remotely represent rather than the old District 6 boundaries, i.e. District 2, would upend the appointment process as well as the term limit law. These facts illustrate the statewide importance of determining the source of a councilmember's authority to serve for other issues besides just term limit laws.

In 2014, Zapf again appeared on the ballots of her Bay Ho and Bay Park neighbors, this time seeking "reelection" as the District 2 councilmember. (APP 809.) Zapf was thus reelected to a second term from Bay Ho, which had been in District 2 for the majority of her first term. (Op. at 4.) In 2018, Zapf ran for a third term as councilmember from Bay Ho, which had been District 2 for all of her second term. When Zapf was nominated by less than a majority of voters to appear on the general election ballot as one of the top two finishers in the June 2018 primary, Appellant challenged her eligibility to serve pursuant to Elections Code § 16101. (Op. at 4.)

When term limits were enacted in 1992, the initiative passed with over 75% of the vote. (APP 802.) Thus, the vast majority of voters agree that even if they might personally want a particular candidate to serve more than two terms, it would be preferable that *no* candidate be allowed to do this. Properly enforcing term limit laws enacted by voters is an issue of statewide importance, in addition to properly defining the

source of a councilmember's authority to serve, which impacts issues such as recall and appointment as well.

STATEMENT OF THE CASE

I. The Fourth District held that a councilmember serves "from" the district whose voters actually elected the councilmember, but ignored the effects of redistricting on the identity of those voters

In this case of first impression, the Fourth District ruled that in the case of redistricting, the phrase "from any particular district" in a term limit law refers to the district that elected a councilmember and does not refer to the district where a councilmember actually resides. (Op. at 2.) Usually these would be the same thing, as moving out of one's district acts to forfeit the seat. (APP 055; Charter Section 7.) Only in the case of redistricting can one represent a district that one does not live in. (APP 055; Charter Section 5.1.) However, while the district *number* the councilmember represents may stay the same as the district number that elected the councilmember, the geographical areas that number represents are *different* after redistricting.

Implicit in the Fourth District's ruling is that geographical area does not matter, and all that matters is the district number, such that a councilmember who is elected in one geographical area can continue to serve indefinitely in that same geographical area so long as the district number changes. However, the Fourth District did not even analyze this key issue of statewide importance, instead basing its ruling on the fiction that the councilmember had "drawn her authority to serve" from a geographical area that never had her on its ballot, simply because the district *number* of the geographical area that

actually had the councilmember on its ballot was transferred to the new geographical area. (Op. at 18.)

In other words, the Fourth District ruled that only the district *number* a councilmember is assigned to represent matters, and not the geographical boundaries of that district. This means that whenever voters pass an initiative limiting the number of terms a councilmember may serve "from any particular district" as is the case in San Diego, all a city council needs to do to circumvent the limit is to renumber the districts. However, a correct application of the Fourth District's definition of "from any particular district" should refer to actual neighborhoods where the voters are located, not an arbitrary district number assigned to them.

Thus, in the present case, because Bay Ho and Bay Park were in District 2 for the majority of Zapf's first term, the source of votes giving her authority to serve was "from" District 2 for her first term as well as Districts 6 and 7, which also make up parts of the old District 6. (APP 797.) However, the Fourth District ruled that Zapf's authority came solely from *new* District 6, two thirds of which never had Zapf on their ballot. (*Ibid.*)

Correctly applying the definition of "from" the Fourth District settled on, which is the source of votes giving the councilmember the authority to serve, the new district numbers referring to the actual location of those votes should be used for term limit purposes, not just the old district number which has been transferred to a different area.

Defining "from any particular district" after redistricting as an area where a representative never lived and which did not elect that representative, simply because it has the same district number as the area that *did* elect the representative, is an issue of

statewide importance and has ramifications for other issues that depend on where a councilmember serves "from" as well, such as the right to recall or appointments to fill a vacancy.

By defining "from" as meaning the source of votes, and source of votes as merely the district *number* divorced from the actual voters who were part of the district that initially elected the councilmember, the Fourth District completely failed to address the effect of redistricting. By holding that an elected official serves "on behalf of the district from which he or she has drawn her authority to serve," the Fourth District entirely avoided the key issue of what happens when the district that elected the councilmember is renumbered as a new district or districts.

The Fourth District noted that the term limit law could have used the words "resides in" instead of "from" in order to refer to which district counts against term limits. (Op. at 15.) However, the law also could have used the words "representing" or "for" instead of "from" to make clear that after redistricting, the district the councilmember as well as the voters who elected the councilmember reside in does not count towards term limits, if the councilmember is assigned to represent a different area.

The purpose of any term limit law based on districts is clearly frustrated if the same geographical area where a councilmember lives is able to keep electing that same representative beyond the allowable term limits simply because the district number attached to that area has changed. As many California cities are moving to district elections due to population increases, this is an issue that will be taking on greater and greater statewide importance.

II. The Fourth District ruled that whenever there is legislative ambiguity, courts must prevent term limit laws from being enforced

Another issue of statewide importance is raised by the Fourth District holding that in any case of ambiguity, courts must always uphold the right to hold office. (APP 16.) However, traditional rules of statutory interpretation do not allow such an automatic approach. "If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal. 4th 733, 737.)

There are different types of legislative ambiguity. One type is leaving a gap that needs to be filled in. In such cases relied on by the Fourth District, courts have held that absent express wording to the contrary, they will support the right to hold office. However, another type of ambiguity is created by the simple fact that words can have multiple meanings. Under this type of ambiguity, any statute could be considered ambiguous. Yet, not every interpretation of a word is reasonable given its context.

By holding that in cases of *any* ambiguity, California courts must now uphold the right to run for office, *no* term limit law can ever be enforced, because all words have multiple meanings. The correct legal standard when a statute does not have a glaring hole but instead has a word that is susceptible to multiple interpretations is to turn to factors such as legislative history, purpose and public policy, not to automatically support the right to hold office.

The Opinion is in this regard inconsistent with California Supreme Court authority since 1991 holding that ambiguities in term limit laws should be resolved by considering "indicia of voters' intent other than the language of the provision itself," and not automatically rule in favor of the right to hold office. (*Legislature v. Eu* (1991) 54 Cal. 3d 492, 504.)

REHEARING WOULD HAVE BEEN FUTILE

Appellant did not seek rehearing because the Fourth District's preferred definition of the word "from" was discussed at length at oral argument to no avail. Appellant pointed out repeatedly that using "from" to mean source of votes would actually refer to Districts 2, 6 and 7 after redistricting, and not just District 6, as the old district lines no longer existed. However, the Fourth District chose to maintain the fiction that the new District 6 the councilmember was assigned to remotely represent was the source of votes that elected her, even though two thirds of new District 6 never had the councilmember on their ballot.

REVIEW IS NEEDED UNDER CRC RULE 8.500(b)(1) TO SETTLE CRITICAL QUESTIONS OF LAW AFFECTING TERM LIMITS, RECALL EFFORTS, APPOINTMENT TO FILL VACANCIES, AND ANY OTHER PROCEDURE THAT DEPENDS ON A CORRECT DEFINITION OF WHERE A COUNCILMEMBER IS "FROM" AFTER REDISTRICTING

The key component of the Fourth District's ruling illustrating why it cannot withstand any logical scrutiny is as follows:

> Read in context, "from any particular district" is not a standalone phrase, but a phrase that modifies the words immediately preceding it, i.e., the words "Council member." Thus, the term limit provision does not limit a person's ability to *serve* from a particular district. It limits a person's ability to serve "*as a Council member*

> from any particular district." (San Diego City Charter, art. III, § 12, subd. (c), italics added.)
>
> (Op. at 12-13, italics in original.)

However, this is nonsensical. Excising the words "as a Council member" from the phrase "serve…from a particular district" does nothing to change the definition of "from." The Fourth District's holding that if the word "Council member" did not appear in the phrase, that "serve from a particular district" would mean the councilmember's residence, but on the other hand the phrase "serve *as a Council member* from any particular district" somehow transforms the word "from" to mean "representing," makes no sense.

The Fourth District then goes on to discuss the importance of "the existence of separate geographical districts, along with the power of the electors in those districts to elect their respective council members." (Op. at 13.) However, the Fourth District completely ignores the fact that Zapf did not continue formally representing all the same voters after redistricting, but instead was temporarily assigned to remotely represent a district that included areas she was never from and which never elected her, and excluded areas that did elect her. Meanwhile, the voters in Bay Ho and Bay Park who did elect Zapf will now have her on their general election ballots a third consecutive time after she has already served two terms from this area, in clear contravention of the wording of the term limit law and the intention of the voters in passing it.

The dictionary definitions cited by the Fourth District for the word "from" all support Appellant's argument. Using the "source, cause, agent or basis" definition, the

Fourth District notes, "District 6—not District 2—elected Councilmember Zapf in 2010 and thus acted as the 'source, cause, agent, or basis' of her term in office." (Op. at 14.) However, the Fourth District fails to acknowledge in its analysis what it had already noted in another section of its opinion, which is that the District 6 that elected Councilmember Zapf *no longer existed* as of September 24, 2011. (Op. at 3, fn 1.) Instead, these geographical areas became parts of Districts 2, 6 and 7. Thus, for term limit purposes, the "source, cause, agent, or basis" of Councilmember Zapf's first term in office was actually voters in Districts 2, 6 and 7 as those lines are now drawn and were in effect for the majority of her first term.

Defining "from" as the source of votes, i.e. the residency of the voters, is actually a much broader definition for term limit purposes than the residency of the councilmember as argued for by Appellant. If only the district the councilmember is from counts for term limit purposes, Zapf would have been free to move out of District 2 in 2014 and serve two more terms in any other district. However, if the district the voters are from is what counts for term limit purposes, the logical conclusion of this is that serving another term from Districts 2, 6 or 7 in 2014 would have been Zapf's final eligible term. The Fourth District short circuited this analysis, however, by maintaining the fiction that new District 6 was the same as old District 6, even though old District 6 was actually parts of Districts 2, 6 and 7 after 2011.

The Fourth District spends just three sentences discussing one definition of "from" that means "starting or focal point of an activity," claiming that for Councilmember Zapf's first term, this was "District 6, on behalf of which she acted while serving as its

council member." (Op. at 15.) However, again the Fourth District fails to distinguish between old or new District 6. As Zapf continued to reside in Bay Ho, which became District 2 along with Bay Park, her "starting or focal point" could just as plausibly have been those neighborhoods.

Another possibility that is more logical than the loophole created by the Fourth District is the framers of this charter language and the voters who approved it intended to *prevent* such a loophole from occurring. Prohibiting a councilmember from serving more than two consecutive terms "from *any* particular district" (emphasis added) could be a way to stop redistricting from having *any* effect on term limits, and as the ballot statement said, "guarantee that the power of incumbents 'STOPS' after two terms." (APP 793, emphasis in original.)

To the extent a councilmember moves, thus forfeiting her seat under Charter Section 7, and starts over in a new district, this would not be a consecutive term and would thus not be prohibited by the term limit law anyway. It is illogical to assume the framers intended to allow the loophole envisioned by the Fourth District that only allows additional consecutive terms in the case of redistricting. "Further, by expressing one exceptional situation in which it is possible to *serve* 'more' than three terms, the People are presumed to have forbidden other exceptions." (*Schweisinger v. Jones* (1998) 68 Cal. App. 4th 1320, 1326, emphasis added.)

The Fourth District previously noted the importance of the identity of the district that elected the councilmember. (Op. at 13-14.) The Fourth District even referred to Section 23 of the City Charter providing for recall of councilmembers, assuming that it is

obvious and settled law that voters in a new council district can vote to recall a councilmember who was elected by the old council district. (Op. at 13.) Yet, this question, like the present question, is neither obvious nor settled after redistricting has occurred, and is an issue of statewide importance.

In an August 28, 1990 Memo of Law, the San Diego City Attorney gave a lengthy analysis of which voters can sign a recall petition, ultimately determining that neither the City Charter, Municipal Code, nor California caselaw had an answer. "Case law in other jurisdictions, however, supports the view that the right to recall an elected official remains with the original district even when the district's boundaries have been superseded by a reapportionment statute (or redistricting ordinance. *McCall v. Legislative Assembly*, 291 Or. 663, 634 P.2d 223,231, 234 (1981)."
(http://docs.sandiego.gov/legalopinions/LO-90-3.pdf at p. 8.)

The August 28, 1990 memo also noted "the Colorado Supreme Court also recognized that reapportionment [redistricting] efforts should not be used to defeat the important constitutionally based principal of recall. *In re Reapportionment of the Colorado General Assembly*, 647 P.2d 191, 199 (Colo. 1982)."
(http://docs.sandiego.gov/legalopinions/LO-90-3.pdf at p. 9.)

Once the 1990 recall petition made it past the signature qualifying stage, the City Attorney again followed up with another lengthy memo analyzing which voters should have the right to *vote* on the recall after redistricting had taken place. The City Attorney noted, "the electors who would have the most at stake in that evaluation would be the ones who elected the incumbent," meaning those voters living within the *old* district

lines, not the new ones, even though the latter were the ones actually being represented by the councilmember being recalled at that point.

(http://docs.sandiego.gov/memooflaw/ML-90-105.pdf at p. 5.)

The City Attorney then referred to voters in the newly drawn council district as having "no identification with this particular incumbent" and having "had nothing to do with getting this particular incumbent elected in the first place," concluding, "the electors who voted the incumbent into office should be the ones to decide whether the incumbent should stay in office." (http://docs.sandiego.gov/memooflaw/ML-90-105.pdf at p. 6.)

In the present case, the Fourth District assumed that the district a councilmember is "from" for purposes of a recall election is the same as it is for term limit purposes. (Op. at 13.) However, this question has never been analyzed nor settled in any California case including this one. The only City Attorney memorandums of law on the topic, from the early 1990s, argue for the opposite of what the Fourth District assumed had already been settled. The district a councilmember is "from," both for purposes of term limits and recall, should be the district boundaries that *elected* the councilmember, not the district the councilmember is assigned to remotely represent.

The logical flaw in the Fourth District's reasoning is laid bare with this sentence: "Read in context, the term limit provision acts as a cap on a member's ability to serve more than two consecutive terms for the district that elected that member and on whose behalf the member serves, not the council member's geographical location or residency." (Op. at 14.) The problem is that in the case of redistricting, this statement is an oxymoron. The "district that elected that member" is *different* from the district "on whose

behalf the members serves." Additionally, the councilmember's residency *must be* in the district that elected the councilmember, but in the specific case of redistricting, is not necessarily the district the councilmember is assigned to represent.

The definition of "from" has also come up in the case of appointment to fill the remainder of the District 2 council seat following redistricting. As noted by the Fourth District, "In a 2014 special election, Councilmember Faulconer was elected the mayor of San Diego." (Op. at 4.) Because Councilmember Zapf had been assigned to represent the new District 6 and then-Councilmember Faulconer had been assigned to represent the new District 2 that they both lived in, the City Council appointed an interim councilmember to represent District 2 for the remainder of the term.

Even though the appointed councilmember was to take over Faulconer's role of representing the new District 2, the City Council only allowed residents of the *old* District 2 to apply for the position. This meant that anyone living in Bay Ho or Bay Park was ineligible to even apply for the ability to represent Bay Ho and Bay Park on the City Council for the duration of the term vacated by Faulconer.

Thus, the residents of Bay Ho and Bay Park were deprived of the ability to have anyone from their neighborhoods represent them as the District 2 councilmember for the duration of the 2010-2014 term despite those neighborhoods being in District 2 at that time and the District 2 councilmember being their councilmember. However, there was a councilmember who was *from* this area during that term: Lorie Zapf. Under the Fourth District's reasoning, Zapf can continue appearing on the ballots of Bay Ho and Bay Park

residents for a third time now, thus enjoying the benefits of incumbency twice *from the same district*, which is exactly what the term limit law sought to prevent.

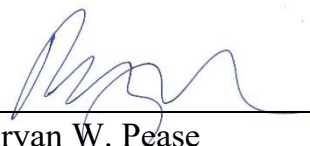
While Bay Ho and Bay Park were labeled District 6 in 2010, they very quickly became District 2 in 2011 and were District 2 for the majority of Councilmember Zapf's first term. Thus, Councilmember Zapf drew her authority to serve in part *from* District 2 voters who had previously been labeled District 6. She then ran and was reelected from District 2 in 2014. This makes Councilmember Zapf ineligible to serve a third consecutive term as the councilmember from District 2. The Charter is clear that a term in excess of two years counts as a full term for term limit purposes.

CONCLUSION

The Fourth District's definition of the phrase "from any particular district" as applied to term limits is not internally consistent and is also at odds with every other analogous situation, including recall and appointment. Further, no California appellate decision has ever actually settled the issue of the district boundaries delineating where a councilmember derives her authority to serve in any of these situations after redistricting, and the Fourth District's opinion creates more questions than it answers. The effect of redistricting on what district boundaries a councilmember derives her authority to serve from is a question of statewide importance.

Dated: September 26, 2018

LAW OFFICE OF BRYAN W. PEASE

By: 

Bryan W. Pease
Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

I certify that the foregoing petition has a typeface of 13 points and contains 5,058 words.

Dated: September 26, 2018 By: 

Bryan W. Pease

PROOF OF SERVICE

I, Parisa Ijadi-Maghsoodi, declare:

I am over the age of 18 years and not a party to this action. My business address is 3170 Fourth Ave., Suite 250, San Diego, CA 92103.

On September 26, 2018, I served the foregoing petition for review on all parties to this action by electronic filing at the following addresses:

James Sutton, Esq. <jsutton@campaignlawyers.com>

San Diego Superior Court <appeals.central@sdcourt.ca.gov>

Fourth District Court of Appeal Division 1 (via TrueFiling)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 26, 2018 at San Diego, California.

Parisa Ijadi-Maghsoodi

Filed 8/17/18

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BRYAN PEASE, Contestant and Appellant, v. LORIE ZAPF, Defendant and Respondent.	D074405 (Super. Ct. No. 37-2018-00033348-CU-PT-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Peter C. Deddeh, Judge. Affirmed.

Singleton Law Firm, Gerald B. Singleton and Trenton G. Lamere; Law Office of Bryan W. Pease and Bryan W. Pease for Contestant and Appellant.

The Sutton Law Firm, James R. Sutton, Bradley W. Hertz and Matthew C. Alvarez for Defendant and Respondent.

In November 1992, San Diego voters approved an amendment to the city charter that established a term limit for members of the San Diego City Council.

Bryan Pease is a city council candidate who did not qualify for the November 2018 general election. He contends Councilmember Lorie Zapf—who received the most votes in the primary election—is termed out of office and ineligible to run in the general election. He maintains he should be placed on the ballot instead. We disagree.

Here, the parties agree Councilmember Zapf represented District 6 during her first term of office and represented District 2 during her second term of office. The parties also agree that, as a result of redistricting that occurred during Councilmember Zapf's first term of office, she resided in District 2 for both terms. Based on her residency, Pease contends Councilmember Zapf has already served two consecutive terms from the same district and is termed out of office.

Because this interpretation is not supported by the language of the term limit provision and fails to take into account other relevant charter provisions, including the impact of the redistricting provision, we reject Pease's argument. The term limit provision regulates the number of terms an incumbent may serve on behalf of the electors of a given district, and is not dependent solely on residency. This holding follows from the language of the charter as a whole, while also giving due deference to the fundamental right of voters to select among eligible candidates to represent them in elected office.

Councilmember Zapf is eligible for reelection in the November 2018 general election. We affirm the trial court's judgment in her favor.

FACTUAL AND PROCEDURAL BACKGROUND

On November 2, 2010, Councilmember Zapf was elected to serve a four-year term on the San Diego City Council as the representative for District 6. At that time, District 6 encompassed Bay Ho (where Councilmember Zapf lived), Bay Park, Clairemont Mesa, Kearny Mesa, Serra Mesa, and Mission Valley. In the same year, then-Councilmember Kevin Faulconer, who lived in Point Loma, ran for and won reelection to serve on the city council as the representative for a neighboring district, District 2. Councilmembers Zapf and Faulconer were sworn into office on December 3, 2010.

Following the 2010 national decennial census, San Diego's Redistricting Commission—a panel of appointed voters with authority to approve city council district boundaries (San Diego City Charter, art. II, § 5.1)—adopted a plan to redraw San Diego's district boundaries, effective September 24, 2011.[1] As a result of redistricting, the newly-drawn District 2 included both Councilmember Faulconer's residence in Point Loma and Councilmember Zapf's residence in Bay Ho. Although the city charter provided a method to designate which district each council member would represent for the remainder of his or her term, there is no evidence the city council implemented this option. However, after redistricting, the city council's meeting agendas, minutes, and

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1 The version of the San Diego City Charter in effect at the time provided that the Redistricting Commission's adoption of a redistricting plan "shall be effective thirty (30) days after adoption." (Former San Diego City Charter, art. II, § 5.1.) The Redistricting Commission approved the redistricting plan on August 25, 2011. Therefore, the redistricting plan was effective on September 24, 2011.

website continued to refer to Councilmember Faulconer as the representative for District 2 and Councilmember Zapf as the representative for District 6, and the council members acted in those official capacities for the remainder of their terms.

In a 2014 special election, Councilmember Faulconer was elected the mayor of San Diego and, in the 2014 general election, Councilmember Zapf was elected to city council as the representative for District 2, the district in which her Bay Ho residence was located due to the redistricting that had occurred in 2011. Councilmember Zapf was sworn into office on December 10, 2014, and her term will end in December 2018.

Councilmember Zapf and several other candidates campaigned for the soon-to-be-vacant position of District 2 representative on the city council. In the primary election held on June 5, 2018, Councilmember Zapf and Dr. Jennifer Campbell were the top two vote-getters and thus qualified for the ballot in the upcoming general election. Councilmember Zapf received 43 percent of the vote and Dr. Campbell received 21 percent of the vote.[2] Pease, who finished the primary race in third place with 20 percent of the vote, did not qualify for the general election.

On July 6, 2018, Pease filed a petition under Elections Code section 16101,[3] in which he challenged Councilmember Zapf's eligibility for office and asked the trial court

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2 The top two vote-getters in a primary election to fill an elective city office qualify for the general election, irrespective of whether one candidate has received a majority of votes cast for all candidates. (San Diego City Charter, art. II, § 10.)

3 All further statutory references are to the Elections Code, unless otherwise noted.

to set aside her nomination and declare him nominated for the general election.[4] According to Pease, Councilmember Zapf's nomination contravenes the voter-approved term limit provision in the city charter and thus she is ineligible to run for another term. That provision states "no person shall serve more than two consecutive four-year terms as a Council member from any particular district." (San Diego City Charter, art. III, § 12, subd. (c).) A partial term in excess of two years is treated as a full term under the term limit provision. (*Ibid.*)

In the trial court, Pease initially argued that, effective upon the date of redistricting, Councilmember Zapf no longer represented District 6 and instead began to represent District 2, where she resided. In support of this argument, Pease contended that upon redistricting, a council member represents the newly drawn district in which he or she resides, not the district that elected the council member.[5] Based on this theory, Pease maintained that Councilmember Zapf had already served two terms as the council member for District 2—one term from the effective date of redistricting until 2014

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4 Section 16101 states in pertinent part as follows: "Any candidate at a primary election may contest the right of another candidate to nomination to the same office by filing an affidavit alleging . . . [¶] . . . [t]he defendant is not eligible to the office in dispute."

5 Pease based this argument on a city charter provision in effect at the time redistricting took place in 2011, which stated in pertinent part as follows: "Upon any redistricting pursuant to the provisions of this Charter, incumbent Council members will continue to represent the district in which they reside, unless as a result of such redistricting more than one incumbent Council member resides within any one district, in which case the City Council may determine by lot which Council member shall represent each district." (Former San Diego City Charter, art. III, § 12, subd. (g).)

(which, as discussed *ante*, was treated as a full term in office) and a second term from 2014 to the present. In opposition, Councilmember Zapf emphasized that Pease's argument would lead to irrational results and require the court to find that District 6 was "unrepresented" and District 2 was "represented by two Councilmembers."

Shortly before the hearing on the petition, Pease filed a reply brief in which he modified his legal challenge. In this brief, Pease conceded for the first time that Councilmember Zapf "could, and apparently did, represent . . . District 6" throughout her first term of office, even after redistricting. Nevertheless, he argued that Councilmember Zapf represented District 6 *from* her residence in the newly-drawn District 2 and, therefore, has already served two terms " 'from a particular district.' "

On July 30, 2018, the trial court issued findings of fact and conclusions of law and pronounced judgment in favor of Councilmember Zapf.[6] The court found that after redistricting took place, Councilmember Zapf continued to represent District 6.[7] Although the court did not specifically address Pease's new argument that Councilmember Zapf represented District 6 *from* District 2 after redistricting, the court also concluded that "Councilmember Zapf has not yet served two consecutive four-year

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6 This document is file stamped June 30, 2018, but the court signed it on July 30, 2018, the same day as the hearing on the petition.

7 The trial court reached this finding based on provisions in the city charter stating that a council member's term of office is four years, unless otherwise provided in the city charter, and redistricting does not terminate a council member's term of office. (Former San Diego City Charter, art. II, § 5.1; *id.*, art. II, § 7; *id.*, art. III, § 12, subd. (e).)

terms 'from any particular district' " and "is eligible for re-election as District 2 Councilmember for the 2018-2022 term."

Pease appeals the judgment under section 16920.

DISCUSSION

I. *The Doctrine of Laches Does Not Apply*

Before we turn to the merits of this appeal, we first address Councilmember Zapf's contention that the doctrine of laches forecloses this lawsuit because Pease waited until after the election to challenge her eligibility. " 'Laches is based on the principle that those who neglect their rights may be barred, in equity, from obtaining relief . . . . The elements required to support a defense of laches include unreasonable delay and either acquiescence in the matter at issue or prejudice to the defendant resulting from the delay . . . .' " (*Krolikowski v. San Diego City Employees' Retirement System* (2018) 24 Cal.App.5th 537, 568.) The party relying on laches has the burden of proving its application. (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624.) The trial court concluded that Pease's challenge was "not barred by the doctrine of laches," and we find no basis to disturb this determination.

Section 16421 permits a candidate in a primary election to contest the nomination of another candidate up to five days after the official canvass of the election. (§ 16421.) Here, the San Diego City Clerk certified the results of the canvass of votes cast in the primary election on July 5, 2018, and Pease filed this lawsuit the next day, thus satisfying

section 16421.[8] We acknowledge that a postelection challenge of this nature, particularly where a pre-election remedy is available, leaves the door open to "instability" and the regrettable possibility that the will of the voters may be nullified. (*McKinney v. Superior Court* (2004) 124 Cal.App.4th 951, 960 (*McKinney*).) Nevertheless, Pease's compliance with section 16421 undercuts Councilmember Zapf's claim of unreasonable delay.[9] (*David Welch Co. v. Erskine & Tulley* (1988) 203 Cal.App.3d 884, 893-894, disapproved on other grounds in *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1239.)

Councilmember Zapf also has not demonstrated prejudice resulting from the purported delay. Councilmember Zapf argues that she "expended a tremendous amount of time and effort in running for re-election," without providing detail to substantiate these allegations or an explanation that ties the asserted harm to Pease's purported delay. Generic and unsupported allegations of this nature are insufficient to establish prejudice.

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[8] In his opening brief, Pease asked us to take judicial notice of a news article reporting that the city clerk certified the results of the canvass of votes on July 5, 2018. We deny the procedurally improper request, as the California Rules of Court require that a party seeking judicial notice "serve and file a separate motion with a proposed order." (Cal. Rules of Court, rule 8.252(a)(1).) However, our disposition of this request matters little, given that the date of the official canvass is undisputed.

[9] Councilmember Zapf argues that *McKinney*, *supra*, 124 Cal.App.4th 951 supports her claim of unreasonable delay. We disagree. In *McKinney*, an elector sought a writ of mandate to nullify the results of an election and argued that one of the losing candidates in that election was ineligible to run. (*Id.* at p. 955.) The court denied the elector's petition and found that he should have sought relief pre-election, in large part because the Elections Code did not expressly authorize the elector to bring his claim postelection. (*Id.* at pp. 958-959.) By contrast, section 16421 permits this postelection challenge.

(*In re Marriage of Parker* (2017) 14 Cal.App.5th 681, 689.) Accordingly, we reject the claim of laches and turn now to the merits of the appeal.

II. *The Term Limit Provision Does Not Foreclose Councilmember Zapf's Nomination*

A. *General Legal Principles*

"San Diego is a charter city. It can make and enforce all ordinances and regulations regarding municipal affairs subject only to the restrictions and limitations imposed by the city charter, as well as conflicting provisions in the United States and California Constitutions and preemptive state law. Consequently, ' "[within] its scope, such a charter is to a city what the state Constitution is to the state." ' " (*Grimm v. City of San Diego* (1979) 94 Cal.App.3d 33, 37.) The San Diego City Council possesses authority under the California Constitution and the city charter to place proposed city charter amendments on the ballot to be considered and voted upon by the electors at municipal elections. (Cal. Const., art. XI, § 3, subd. (b); San Diego City Charter, art. XIV, § 223.)

"The principles of construction that apply to statutes also apply to the interpretation of charter provisions. [Citation.] 'In construing a provision adopted by the voters our task is to ascertain the intent of the voters.' [Citation.] 'We look first to the language of the charter, giving effect to its plain meaning. [Citation.] Where the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history.' [Citation.] ' "An interpretation that renders related provisions nugatory must be avoided . . . , [and] each sentence must be read . . . in the light of the [charter's overall] scheme . . . ." ' [Citation.]

'When statutory language is susceptible of more than one reasonable interpretation, courts should consider a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history including ballot pamphlets, public policy, contemporaneous administrative construction and the overall statutory scheme.' " (*Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 349 (*Don't Cell Our Parks*).)

We also must remain cognizant that "the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship." (*Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d 179, 182.) Accordingly, "[t]he exercise of this right should not be declared prohibited or curtailed except by plain provisions of law." (*Ibid.*; *Woo v. Superior Court* (2000) 83 Cal.App.4th 967, 977 (*Woo*) [the right to run for public office may "be curtailed only if the law clearly so provides"].)

The interpretation of a city charter presents a legal issue we review de novo on appeal. (*Don't Cell Our Parks*, *supra*, 21 Cal.App.5th at pp. 349-350; *City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756, 789 ["This claim turns on the proper interpretation of the City charter, an issue that we review de novo."].)

B. *Application*

The San Diego city charter states "no person shall serve more than two consecutive four-year terms as a Council member from any particular district." (San Diego City Charter, art. III, § 12, subd. (c).) This appeal requires us to interpret the meaning of the phrase "from any particular district," as it is used in the context of this

term limit provision. Pease contends that the phrase "from any particular district" precludes an individual from serving as a council member for more than two consecutive terms while *residing* in a given district. By contrast, Councilmember Zapf claims that it precludes a person from serving more than two consecutive terms *while representing* the same district. Considering the term limit provision, along with other relevant city charter provisions, we agree with Councilmember Zapf's interpretation.

The city charter requires each council member to be "an actual resident and elector of the district from which the Council-member is nominated," and provides that "[t]he office of a Councilmember shall be vacated if he or she moves from the district from which the Councilmember was elected." (San Diego City Charter, art. II, § 7.) However, where, as a result of redistricting, a council member's residence is relocated into a different, newly drawn district, the council member may continue to represent the district that elected him or her even though the council member no longer resides in that district.[10] All parties agree that is what occurred here—after redistricting, Councilmember Zapf continued to serve as the representative for District 6, even though she resided in the newly drawn District 2.

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10 As discussed *ante*, the city charter in effect in 2011 stated that, in the case of redistricting, an incumbent council member would represent the district in which he or she resided. (Former San Diego City Charter, art. III, § 12, subd. (g).) However, if multiple council members resided in the same newly-drawn district, the city council could determine which incumbent council member represented which district. (*Ibid.*) Now, the city charter provides that, upon redistricting, an incumbent council member continues to represent the district that elected him or her for the remainder of the council member's term. (San Diego City Charter, art. III, § 12, subd. (d).)

With that context in mind, we turn to the issue at hand—how to interpret the term limit provision stating that "no person shall serve more than two consecutive four-year terms as a Council member from any particular district." (San Diego City Charter, art. III, § 12, subd. (c).) In doing so, we must "not interpret . . . [this] charter provision[] . . . in isolation." (*Mason v. Retirement Board* (2003) 111 Cal.App.4th 1221, 1229.) And, we " ' "construe [the charter provision] with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." ' " (*Ibid.*)

In support of his argument that the term limit provision depends on a candidate's residency, Pease focuses exclusively on the word "from" within the phrase "from any particular district." Pease maintains "from" connotes a "physical location" and, based on this definition, concludes Councilmember Zapf has already served two consecutive terms of office "from [a] particular district": the first while living in Bay Ho representing District 6 and the second while still living in Bay Ho representing District 2. By isolating the word "from," divorced from its context and surrounding language, Pease violates well-settled rules of construction applicable to charters. (*The Internat. Brotherhood of Boilermakers, etc. v. NASSCO Holdings Inc.* (2017) 17 Cal.App.5th 1105, 1120 ["we must read the language as it is placed in the [charter] section, and in the context of the entire [charter] scheme"].)

Rather than focusing exclusively on the isolated word "from" or the equally isolated phrase "from any particular district," our traditional rules of construction require us to read this charter language in context. Read in context, "from any particular district" is not a standalone phrase, but a phrase that modifies the words immediately preceding it,

i.e., the words "Council member." Thus, the term limit provision does not limit a person's ability to *serve* from a particular district. It limits a person's ability to serve "*as a Council member* from any particular district." (San Diego City Charter, art. III, § 12, subd. (c), italics added.)

Having reached this conclusion, we consider what it means to serve "as a Council member from [a] particular district." We do so in light of other relevant city charter provisions, including the following:

- Section 5.1 (titled "Redistricting Commission"), which states that "[t]he members of the City Council shall be elected by districts" and "districts shall be used for all elections of Council members, including their recall, and for filling any vacancy in the office of member of the Council . . . ." (San Diego City Charter, art. II, § 5.1.)
- Section 10 (titled "Elections"), which states that "City Council members shall be nominated and elected by the electors of the district for which elective office they are a candidate." (*Id.*, art. II, § 10.)
- Section 23 (titled "Initiative, Referendum and Recall"), which states that "the recall of a Council member . . . shall require a petition signed by fifteen percent of the registered voters of the Councilmanic District . . . ." (*Id.*, art. III, § 23.)

For purposes of this appeal, the important point to be drawn from these provisions is the existence of separate geographical districts, along with the power of the electors in those districts to elect their respective council members. For instance, sections 5.1 and 10 provide that a person serves as a council member from a given district if that district nominates and elects that person to office. (San Diego City Charter, art. II, §§ 5.1, 10.) Section 23 reinforces the power of a district's electors by providing them authority to recall a council member if the member does not suitably represent the district's interests. (*Id.*, art. III, § 23.) And, as our court observed in an appeal involving city council

districts, provisions such as these ensure that after a council member attains office, the council member "look[s] more to the needs of his [or her] own district than to those of the city at large," such that a council member is "the representative of his [or her] own district [more so] than the city as a whole." (*D'Adamo v. Cobb* (1972) 27 Cal.App.3d 448, 451.)

These provisions and precedent make clear that the question whether a person serves as "a Council member from [a] particular district" depends on the identity of the district and the electors that *elected* the council member and on whose behalf the council member *serves*. Read in context, the term limit provision acts as a cap on a member's ability to serve more than two consecutive terms for the district that elected that member and on whose behalf the member serves, not the council member's geographical location or residency.

Even if we were to focus on the isolated word "from" without any context, as Pease does, that word does not support Pease's interpretation of the term limit provision. Pease relies on a Merriam-Webster's dictionary definition of "from," which defines "from" as a "function word to indicate the source, cause, agent or basis . . . ." (Webster's 11th New Collegiate Dict. (2003) pp. 502-503.) However, this definition undermines Pease's argument, given that District 6—not District 2—elected Councilmember Zapf in 2010 and thus acted as the "source, cause, agent, or basis" of her term in office. Pease also relies on an alternative definition from Merriam-Webster's dictionary that defines "from" as "a function word to indicate the starting or focal point of an activity . . . ." (*Ibid.*) Once again, this definition supports Councilmember Zapf's position. The "focal

point" of her first term of office was District 6, on behalf of which she acted while serving as its council member. Pease provides a third dictionary definition as well, which defines "from" as "a starting point of a physical movement or a starting point in measuring or reckoning . . . ." (*Ibid.*) To the extent this definition applies at all, the "starting point" of Councilmember Zapf's term of office was District 6, where she resided when her term began in 2010. Thus, the definitions of the word "from" that Pease offers do not support his argument. Quite the opposite, they undercut it.

Further, if the term limit provision did in fact depend on the residency of the council member in question, as Pease claims, we would have expected that the provision would have expressly stated as much. (*Wilson v. Safeway Stores* (1997) 52 Cal.App.4th 267, 272 ["We may not speculate that the Legislature meant something other than what it said, nor may we rewrite a statute to make express an intention that did not find itself expressed in the language of that provision."].) For example, the term limit provision could have stated as follows: "No person shall serve more than two consecutive four-year terms as a Council member *while he or she resides in* any particular district." However, it does not.

This is particularly noteworthy, given that city charter provisions expressly use the terms "resident" and "residency" when a person's residency is material. For instance, the city charter states that "[a]n elective officer of the City shall be a *resident* and elector of the City." (San Diego City Charter, art. II, § 7, italics added; see also former San Diego City Charter, art. III, § 12, subd. (g) ["Upon any redistricting pursuant to the provisions of this Charter, incumbent Council members will continue to represent the district *in*

which they reside, unless as a result of such redistricting more than one incumbent Council member resides within any one district, in which case the City Council may determine by lot which Council member shall represent each district."], italics added.) The differences in terminology used in these provisions, on the one hand, and the term limit provision, on the other hand, reinforce our conclusion that the term limit provision does not depend on a candidate's residency. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117 ["Where different words or phrases are used in the same connection in different parts of a [city charter], it is presumed the [electorate] intended a different meaning."].) Rather, as discussed *ante*, it turns on the identity of the district on behalf of which the council member has served.

Although we resolve this appeal based on the provision's plain and unambiguous language, we would reach the same conclusion were we to find ambiguity. "In our democracy the right to seek and hold public office has been accorded special, sensitive protection as a fundamental and valuable constitutional right by our California courts." (*Eldridge v. Sierra View Local Hosp. Dist.* (1990) 224 Cal.App.3d 311, 316.) Thus, we interpret ambiguity, even in term limit measures, "in favor of eligibility to hold office." (*Woo*, *supra*, 83 Cal.App.4th at p. 977 [construing term limit provision to permit incumbent city council member to run for reelection]; *White v. City of Stockton* (2016) 244 Cal.App.4th 754, 761 ["Because the measure does not contain an express and clearly written cumulative limitation, we are required to resolve any ambiguity in favor of eligibility to run for office."].) Our interpretation of the city charter provision at issue

promotes the rights of individuals like Councilmember Zapf to seek and hold public office. Pease's interpretation, by contrast, would accomplish the opposite result.

Pease contends that, to the extent ambiguity exists, the purpose, legislative history, and public policy of the term limit provision support his reading of the provision. According to Pease, the intent of the provision was "to prevent councilmembers from running for reelection with the benefit of incumbency after serving two terms." However, the provision at issue here does not reflect a desire to limit incumbency to the degree Pease presupposes. It does not impose a lifetime bar on an incumbent's ability to run for a previously held seat and instead limits the member's ability to run for more than two *consecutive* terms. (*Conde v. City of San Diego* (2005) 134 Cal.App.4th 346, 349-351 (*Conde*).) As all parties agree, the term limit provision also does not preclude a council member from residing in and representing one district for two terms, then moving to another district and representing that district for two terms. Thus, Pease overstates the alleged purpose and public policy underpinning the term limit provision.

Pease also cites extrinsic aids in support of his arguments relating to the supposed purpose, legislative history, and public policy of the term limit provision. He quotes from a city council resolution that put the term limit provision on the ballot, which states that term limits would " 'eliminat[e] or reduc[e] unfair advantages enjoyed by incumbents, restor[e] open access to the political process, and stimulat[e] the voters' participation in the electoral process.' " He also points to language from the ballot pamphlet, which states: "We can guarantee that the power of incumbents 'STOPS' after two terms --- by voting 'YES' on Proposition A." We recognize that, under appropriate

circumstances, such materials can be of assistance when resolving ambiguity. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901.) However, these particular materials are silent on the critical issue in this appeal—whether the application of a term limit depends on the district an incumbent *represents* or the one in which he or she *resides*—and thus do not support Pease's argument. Further, they—like Pease—" 'overstate[] the [positive] effects of the [term limit] measure,' " and thus are " 'not highly authoritative in construing the measure.' " (*Conde*, *supra*, 134 Cal.App.4th at pp. 350-351.)

For all these reasons, we conclude that the term limit provision in San Diego's city charter plainly and unambiguously caps the number of terms an incumbent may serve *on behalf of the district* from which he or she has drawn her authority to serve on the city council, not the number of terms that an incumbent may serve while *physically residing* within the geographic boundaries of any one district. Thus, the term limit provision does not render Councilmember Zapf ineligible to seek reelection in the November 2018 general election.[11]

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11 In light of our holding, we do not address the parties' arguments regarding the appropriate remedy had Pease prevailed in this challenge.

DISPOSITION

The judgment of the trial court is affirmed.

HALLER, Acting P. J.

WE CONCUR:

IRION, J.

GUERRERO, J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

08/17/2018

KEVIN J. LANE, CLERK

By _____
Deputy Clerk